

NTSB Order No. EA-4719

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 4th day of November, 1998

Respondent.

ACCORDINGLY, IT IS ORDERED THAT:

The petition for reconsideration is denied.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above order.

however, the record contains ample and un rebutted evidence that supports the law judge's conclusion that respondent did operate the heater and, therefore, that he violated section 39.3. The statement of respondent's mechanic, submitted as an appendix in support of this petition and objected to by the Administrator, is, in addition to being unsworn, inadmissible under our rules as new evidence that has not been shown to have been unavailable at the time of the original proceeding. See 49 C.F.R. § 821.50(c). Moreover, although we empathize with respondent for the losses he suffered to his business because of the tornado which struck the Fort Pierce International Airport on March 9, 1998, our precedent indicates that financial consequences of a sanction are not to be considered in mitigation. See, e.g., Administrator v. Mohamed, 6 NTSB 696, 700 (1988). Similarly, we cannot grant respondent's request that he be given credit against his term of suspension for the period during which he was unable to operate his aircraft due to damage from the tornado. See, e.g., Administrator v. Pope, 5 NTSB 538, 539 (1985) ("the running of the sanction period . . . does not begin until the affected certificate is actually surrendered to the Administrator").